

**MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (22-081)**

Subject

Initiative petition from Austin Shaffer regarding a proposed constitutional amendment to Article XVII of the Constitution of Missouri. (Received December 6, 2021)

Date

December 23, 2021

Description

This proposal would amend Article XVII of the Constitution of Missouri.

The amendment is to be voted on in November 2022.

Public comments and other input

The State Auditor's office requested input from the **Attorney General's office**, the **Department of Agriculture**, the **Department of Economic Development**, the **Department of Elementary and Secondary Education**, the **Department of Higher Education and Workforce Development**, the **Department of Health and Senior Services**, the **Department of Commerce and Insurance**, the **Department of Mental Health**, the **Department of Natural Resources**, the **Department of Corrections**, the **Department of Labor and Industrial Relations**, the **Department of Revenue**, the **Department of Public Safety**, the **Department of Social Services**, the **Governor's office**, the **Missouri House of Representatives**, the **Department of Conservation**, the **Department of Transportation**, the **Office of Administration**, the **Office of State Courts Administrator**, the **Missouri Senate**, the **Secretary of State's office**, the **Office of the State Public Defender**, the **State Treasurer's office**, **Adair County**, **Boone County**, **Callaway County**, **Cass County**, **Clay County**, **Cole County**, **Greene County**, **Jackson County**, **Jasper County**, **St. Charles County**, **St. Louis County**, **Taney County**, the **City of Cape Girardeau**, the **City of Columbia**, the **City of Jefferson**, the **City of Joplin**, the **City of Kansas City**, the **City of Kirksville**, the **City of Mexico**, the **City of Raymore**, the **City of St. Joseph**, the **City of St. Louis**, the **City of Springfield**, the **City of Union**, the **City of Wentzville**, the **City of West Plains**, **Cape Girardeau 63 School District**, **Hannibal 60 School District**, **Malta Bend R-V School District**, **Mehlville School District**, **Wellsville-Middletown R-1 School District**, **State Technical College of Missouri**, **Metropolitan Community College**, **University of Missouri**, **St. Louis Community College**, the **St. Louis County Board of Elections**, the **Board of Election Commissioners City of St. Louis**, the **Kansas City Board of Election Commissioners**, the **Platte County Board of Elections**, the **Jackson County Election Board**, and the **Clay County Board of Election Commissioners**.

Assumptions

Officials from the **Attorney General's office** indicated they expect that, to the extent that the enactment of this proposal would result in increased litigation, they expect that their office could absorb the costs associated with that increased litigation using existing resources. However, if the enactment of this proposal were to result in substantial additional litigation, they may be required to request additional appropriations.

Officials from the **Department of Agriculture** indicated no fiscal impact to their department.

Officials from the **Department of Economic Development** indicated they anticipate no impact as a result of the proposed amendment.

Officials from the **Department of Elementary and Secondary Education** indicated no impact to their department.

Officials from the **Department of Higher Education and Workforce Development** indicated no impact to their department.

Officials from the **Department of Health and Senior Services** indicated this initiative petition has no impact on their department.

Officials from the **Department of Commerce and Insurance** indicated this petition, if passed, will have no cost or savings to their department.

Officials from the **Department of Mental Health** indicated this proposal creates no direct obligations or requirements to their department that would result in a fiscal impact.

Officials from the **Department of Natural Resources** indicated they would not anticipate a direct fiscal impact from this proposal.

Officials from the **Department of Corrections** indicated the petition introduces one new class A felony offense and four new election offenses.

Given the seriousness of class A felony offenses and that the introduction of a completely new class A felony offense is a rare event, their department assumes the admission of one person per year to prison following the passage of the legislative proposal.

Offenders committed to prison with a class A felony as their most serious sentence who were first released sometime during fiscal years 2019, 2020 and 2021, had an average sentence length of 17.1 years and served, on average, 12.3 years in prison prior to first release. Their department assumes one third of the remaining sentence length will be served in prison as a parole return, and the rest of the sentence will be served on supervision in the community.

The sentence lengths associated with these offenses pushes the estimate of total cumulative impact on their department beyond the 10-year time frame of this fiscal note. However, the estimated impact by fiscal year (FY) 2032 is 10 additional offenders in prison.

Change in prison admissions and probation openings with legislation

	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031	FY2032
New Admissions										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	1	1	1	1	1	1	1	1	1	1
Probation										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	0	0	0	0	0	0	0	0	0	0
Change (After Legislation - Current Law)										
Admissions	1	1	1	1	1	1	1	1	1	1
Probations										
Cumulative Populations										
Prison	1	2	3	4	5	6	7	8	9	10
Parole										
Probation										
Impact										
Prison Population	1	2	3	4	5	6	7	8	9	10
Field Population										
Population Change	1	2	3	4	5	6	7	8	9	10

The four election offenses created by this proposal are defined using an offense type, Class III felony, that does not exist. If the intention is to create new class III election offenses, these would be misdemeanor offenses and outside the purview of their department. If the intention is to create new felony election offenses, these would be either class I or class II election offenses. Both class I and class II election offenses are punishable with maximum terms of imprisonment of five years. This is comparable to the maximum term of imprisonment of four years associated with a conviction for a class E felony.

For each new nonviolent class E felony, their department estimates one person will be sentenced to prison and two to probation annually. The average sentence for a nonviolent class E felony offense is 3.4 years, of which 2.1 years will be served in prison with 1.4 years to first release. The remaining 1.3 years will be on parole. Probation sentences will be 3 years.

The estimated cumulative impact of the proposal on their department is an additional eight offenders in prison and an additional 29 offenders on field supervision by FY 2026.

Change in prison admissions and probation openings with legislation-Class E Felony (nonviolent)

	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031	FY2032
New Admissions										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	4	4	4	4	4	4	4	4	4	4
Probation										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	8	8	8	8	8	8	8	8	8	8
Change (After Legislation - Current Law)										
Admissions	4	4	4	4	4	4	4	4	4	4
Probations	8	8	8	8	8	8	8	8	8	8
Cumulative Populations										
Prison	4	8	8	8	8	8	8	8	8	8
Parole			4	5	5	5	5	5	5	5
Probation	8	16	24	24	24	24	24	24	24	24
Impact										
Prison Population	4	8	8	8	8	8	8	8	8	8
Field Population	8	16	28	29	29	29	29	29	29	29
Population Change	12	24	36	38	38	38	38	38	38	38

Combined Estimated Impact

The combined estimated impact of the proposal on their department is an additional 18 offenders in prison and an additional 29 offenders under supervision by FY 2032.

Change in prison admissions and probation openings with legislation

	FY2023	FY2024	FY2025	FY2026	FY2027	FY2028	FY2029	FY2030	FY2031	FY2032
New Admissions										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	5	5	5	5	5	5	5	5	5	5
Probation										
Current Law	0	0	0	0	0	0	0	0	0	0
After Legislation	8	8	8	8	8	8	8	8	8	8
Change (After Legislation - Current Law)										
Admissions	5	5	5	5	5	5	5	5	5	5
Probations	8	8	8	8	8	8	8	8	8	8
Cumulative Populations										
Prison	5	10	11	12	13	14	15	16	17	18
Parole	0	0	4	5	5	5	5	5	5	5
Probation	8	16	24	24	24	24	24	24	24	24
Impact										
Prison Population	5	10	11	12	13	14	15	16	17	18
Field Population	8	16	28	29	29	29	29	29	29	29
Population Change	13	26	39	42	43	44	45	46	47	48

*If this impact statement has changed from statements submitted in previous years, it could be due to an increase/decrease in the number of offenders, a change in the cost per day for institutional offenders, and/or an increase in staff salaries.

If the projected impact of legislation is less than 1,500 offenders added to or subtracted from their department's institutional caseload, the marginal cost of incarceration will be utilized. This cost of incarceration is \$22.616 per day or an annual cost of \$8,255 per offender and includes such costs as medical, food, and operational expense and equipment (E&E). However, if the projected impact of legislation is 1,500 or more offenders added or removed to their department's institutional caseload, the full cost of incarceration will

be used, which includes fixed costs. This cost is \$88.12 per day or an annual cost of \$32,162 per offender and includes personal services, all institutional E&E, medical and mental health, fringe, and miscellaneous expenses. None of these costs include construction to increase institutional capacity.

Their department's cost of probation or parole is determined by the number of Probation and Parole (P&P) Officer II positions that are needed to cover its caseload. Their department's average district caseload across the state is 51 offender cases per officer. An increase/decrease of 51 cases would result in a cost/cost avoidance equal to the salary, fringe, and equipment and expenses of one P&P Officer II. Increases/decreases smaller than 51 offender cases are assumed to be absorbable.

In instances where the proposed legislation would only affect a specific caseload, such as sex offenders, their department will use the average caseload figure for that specific type of offender to calculate cost increases/decreases.

They also provided the following information:

FISCAL ESTIMATE WORKSHEET

Initiative Petition

IP 22-081

	# to/from Prison	Cost per year	Total Cost of Prison (includes 2% inflation per year starting in year 2)		Change in number of Probation and Parole Officers	Probation and Parole Officer II Cost per year (includes PS, fringe, E&E and inflation)	Grand Total Prison and Probation	# of Offenders to/from Probation & Parole
Year 1 (10 months)	5	(\$8,255)	(\$34,396)		0	\$0	(\$34,396)	8
Year 2 (includes 2% inflation)	10	(\$8,255)	(\$84,201)		0	\$0	(\$84,201)	16
Year 3 (includes 2% inflation)	11	(\$8,255)	(\$94,474)		0	\$0	(\$94,474)	28
Year 4 (includes 2% inflation)	12	(\$8,255)	(\$105,123)		0	\$0	(\$105,123)	29
Year 5 (includes 2% inflation)	13	(\$8,255)	(\$116,161)		0	\$0	(\$116,161)	29
Year 6 (includes 2% inflation)	14	(\$8,255)	(\$127,599)		0	\$0	(\$127,599)	29
Year 7 (includes 2% inflation)	15	(\$8,255)	(\$139,447)		0	\$0	(\$139,447)	29
Year 8 (includes 2% inflation)	16	(\$8,255)	(\$151,718)		0	\$0	(\$151,718)	29
Year 9 (includes 2% inflation)	17	(\$8,255)	(\$164,425)		0	\$0	(\$164,425)	29
Year 10 (includes 2% inflation)	18	(\$8,255)	(\$177,579)		0	\$0	(\$177,579)	29

Officials from the **Department of Labor and Industrial Relations** indicated they anticipate no fiscal impact for this initiative petition, with their assumption that the initiative petition only relates to general and primary elections.

Officials from the **Department of Revenue** indicated no impact.

Officials from the **Department of Public Safety - Office of the Director** indicated no impact for all of their department divisions.

Officials from the **Department of Social Services** indicated this has no fiscal impact on their department.

Officials from the **Governor's office** indicated this proposal relating to elections should not fiscally impact their office.

Officials from the **Missouri House of Representatives** indicated no fiscal impact.

Officials from the **Department of Conservation** indicated there is no anticipated fiscal impact (cost or savings) to their department associated with this proposal.

Officials from the **Department of Transportation** indicated this initiative petition will have no fiscal impact to their department/Missouri Highways and Transportation Commission.

Officials from the **Office of Administration** indicated this proposal relating to elections should not fiscally impact their office.

Officials from the **Office of State Courts Administrator** indicated there is no fiscal impact on the courts.

Officials from the **Missouri Senate** indicated they anticipate no fiscal impact.

Officials from the **Secretary of State's office** indicated this amendment requires that all future elections in Missouri use paper ballots only, and that all ballots be counted by hand within six hours of the polls closing. Such a requirement will necessitate increased numbers of election judges to assist in the counting process. This is a new responsibility that must be provided for under Article X, Section 21 of the Missouri Constitution.

At the November 2020 general election, at least 3,025,962 ballots were cast statewide. Their assumption is that it will require two teams of judges to process ballots at a rate of one ballot every five minutes (one team to handle and read the ballot, one team to record the votes). Based on this estimation, it would take the equivalent of 84,100 six-hour team shifts to count all ballots. Since there are two judges in each team (one from each major party), this equates to 168,200 judge-days to be paid at an average cost of \$125 per election judge (previously obtained by surveying a sample of local election authorities). This process would incur a cost of up to \$21,025,000 per election.

If this amendment is passed, this cost would be fully incurred at least once in fiscal year (FY) 23 (April 2023), twice in FY24 (March 2024, April 2024), and three times in FY25 (August 2024, November 2024, April 2025) for a minimum three-year cost of \$94,575,000. There would also be additional partially-incurred costs to cover costs of elections outside of the normally-scheduled primary, general, and municipal elections (such as special elections or municipal elections in charter cities/counties). The exact scope of such potential expense is unknown.

Each year, a number of joint resolutions that would refer to a vote of the people a constitutional amendment and bills that would refer to a vote of the people the statutory issue in the legislation may be considered by the General Assembly.

Unless a special election is called for the purpose, Referendums are submitted to the people at the next general election. Article III section 52(b) of the Missouri Constitution authorizes the general assembly to order a special election for measures referred to the people. If a special election is called to submit a Referendum to a vote of the people, Section 115.063.2 RSMo. requires the state to pay the costs. The cost of the special election has been estimated to be \$7 million based on the cost of the 2020 Presidential Preference Primary.

Their office is required to pay for publishing in local newspapers the full text of each statewide ballot measure as directed by Article XII, Section 2(b) of the Missouri Constitution and Section 116.230-116.290, RSMo. Funding for this item is adjusted each year depending upon the election cycle. A new decision item is requested in odd numbered fiscal years and the amount requested is dependent upon the estimated number of ballot measures that will be approved by the General Assembly and the initiative petitions certified for the ballot. In fiscal year (FY) 2014, the General Assembly changed the appropriation so that it was no longer an estimated appropriation.

In FY19, over \$5.8 million was spent to publish the full text of the measures for the August and November elections. Their office estimates \$75,000 per page for the costs of publications based on the actual cost incurred for the one referendum that was on the August 2018 ballot.

Their office will continue to assume, for the purposes of this fiscal note, that it should have the full appropriation authority it needs to meet the publishing requirements. Because these requirements are mandatory, they reserve the right to request funding to meet the cost of their publishing requirements if the Governor and the General Assembly again change the amount or continue to not designate it as an estimated appropriation.

Officials from the **Office of the State Public Defender** indicated this initiative petition proposing to amend Article XVII will have no fiscal impact on their office.

Officials from the **State Treasurer's office** indicated no fiscal impact to their office.

Officials from **Clay County** indicated they estimate the following for this initiative petition, substantially the same as 22-067:

Costs

- ~\$100,000 extra per Primary Election in even years for poll workers to count in time, Section 1(a) and 3(g)
- ~\$140,000 extra per General Election in even years for poll workers to count in time, Section 1(a) and 3(g)
- ~\$5,000 in Sheriff OT, Section 1(e) (split evenly between primary and general, so \$2,500 each)
- Total of ~\$245,000 every two years in costs

Savings

- ~\$40,000 per year in voting machine software maintenance, Section 1(a)
- ~\$40,000 per year in voting machine capital outlay, Section 1(a)
- Total of ~\$160,000 every two years in savings

Net fiscal impact of **\$85,000** in extra costs every two years for the County's pro rata funding of the Election Board. Or \$42,500 per year annualized.

Officials from **Greene County** indicated there is anticipated costs to their county for this initiative petition.

The aggregate estimated costs to implement this IP in Greene County range from \$586,431.25 to \$1,613,210.83 for a Presidential Election.

This aggregate estimate includes all standard election costs, including contract labor for the absentee voting period, and for voter registration, as well as an additional 25% increase in contracted labor costs due to wage inflation. The range is created by calculating the costs across five different implantation scenarios that include variable labor costs and processing speeds. The highest estimation-scenario is derived from an interpretive assumption that restricts the number of tabulating judges to two per polling location, thereby necessitating a corresponding increase in the total number of polling places required to tabulate the ballots timely (on election night).

It was also determined after thinking through the time it takes to tally a ballot manually, that it will take significantly longer than their original estimate in initiative petition (IP) 22-067, which was very similar in language. This is due to realizing that it is highly unlikely that ballot tally teams will remain proficient and accurate through the 6-hour tally process. Based on past experience in hand tallying contests for either candidates or issues, it is not uncommon for the hand tally teams to fall behind the original pace, due to natural fatigue that occurs when hand counting and/or a realization of a mistake in the tallying taking place. With that in mind this formula has accounted for that potential reality with the goal to give a better more accurate forecast of the anticipated expense for hand tabulation.

In addition, if a polling location is not able to turn off or will not turn off internet access wired or unwired, it is possible the election would need to be conducted in open space areas (such as parks, fields, parking lots etc.), since they would not have internet access. In this scenario it may be necessary to create a polling location via a large tent. Tables (15, 8'),

chairs (50), and a tent rental cost would range from \$612 to approximately \$3,000 per location that would need this accommodation. It is unknown the total number of locations that would need this relocation accommodation, but it is an option that may likely be necessary to pursue. Since this is a true unknown, this cost has not been factored in to the estimate.

- **Table, Chair, and Tent Cost Estimate Resource:**
<https://www.fundwaysofmissouri.com/rentals-n-services#TablesandChairs>

The total *increase in costs to implement this IP in Greene County range from \$184,304.05 – \$1,277,328.64*, depending on which of the above referenced scenarios comes to fruition.

Please find below a summary of the range of estimated cost changes, by category:

Cost Change by Category			
	Low End	<i>to</i>	High End
Poll Worker Pay	65,536.00	<i>to</i>	368,690.00
Hand Tabulation	87,821.03	<i>to</i>	285,504.00
Voter Registration Costs	7,076.20	<i>to</i>	7,076.20
Law Enforcement Costs	40,500.00	<i>to</i>	287,500.00
Elec Night/Testing Teams	(3,099.77)	<i>to</i>	8,480.23
Contract Labor	6,817.36	<i>to</i>	6,817.36
DS200	(7,224.78)	<i>to</i>	(7,224.78)
ExpressVote	-	<i>to</i>	-
Phones	4,577.82	<i>to</i>	35,433.03
Other Election Expenses	-	<i>to</i>	-
Postage	-	<i>to</i>	-
Clerk Staff Salary	-	<i>to</i>	-
Central Supplies - County	-	<i>to</i>	-
Elec Service Ballot Supplies	-	<i>to</i>	-
Polling Place Supplies	-	<i>to</i>	80,653.02
Machine Rental	(35,535.44)	<i>to</i>	(35,535.44)
Poll Pad Rental	-	<i>to</i>	119,407.50
Polling Place Rent	3,199.00	<i>to</i>	54,299.00
Delivery of Supplies	-	<i>to</i>	2,683.64
Legal Notices	-	<i>to</i>	-
Custodial Overtime	-	<i>to</i>	-
Subtotals	169,667.42	<i>to</i>	1,213,783.76
5% Admin Fee	14,636.63	<i>to</i>	63,544.88
		<i>to</i>	
Total Increased Cost of Election	184,304.05	<i>to</i>	1,277,328.64

Officials from the **City of Kansas City** indicated this petition would have a negative fiscal impact on their city in an indeterminate amount because the election authorities would pass the costs of the hand counting on to the city.

Officials from **Metropolitan Community College** indicated no fiscal impact to their college.

Officials from the **St. Louis County Board of Elections** indicated their impact response is the following:

- **\$9.375 million** – To hire Election Day Counters to count Election Day ballots at each polling place
- **\$1.875 million** – To train Election Day Counters (One hour of training)
- **\$555,000** – To hire workers to count absentee ballots
- **\$194,300** – To hire security/officers for Election Day security
- **\$300,000** – To hire additional poll workers because electronic poll books cannot be used

Total Estimated Cost Per Election: **\$12,299,300**

Officials from the **Board of Election Commissioners City of St. Louis** indicated:

This petition requires:

1. Bipartisan teams are to count all ballots by hand and human eye;
2. Ballots will be counted, tabulated and reported at the place where the ballots are cast; and
3. All ballots are to be counted and reported within six hours of the polling places closing.

In November of 2020, at the General Election, a total of 134,886 votes were cast. A team at the St. Louis City Election Board simulated the experience of a bi-partisan team counting a ballot; in an ideal environment, it took the team 140 seconds to count and verify each race on the ballot. Therefore to count all ballots last November it would have taken 18,884,040 seconds, or 314,734 minutes, or 5,246 hours, which divided by six (the hours allocated by the petition for counting) means they would need at a minimum 874 teams counting feverishly and perfectly, like machines, if you will, to even come close to accomplishing this task. 874 teams translates to 1,748 people. Paying 1,748 people \$15/hour for six hours of work requires an expense of \$157,320. In reality, however, given no shows, the need for teams of judges to address voter intent on poorly marked ballots, you would need double the amount of people, therefore 3,496 people for a total of \$314,640.

This is the cost of labor alone. The impact on the ability to use many of the 99 polling places they currently use is almost impossible to determine; i.e., whether many of these places would be willing to participate in this endeavor, whether they have the space to house the number of teams necessary to count, etc.

Officials from the **Platte County Board of Elections** indicated this proposal is blatantly undemocratic, and places technical restrictions under which it becomes impossible to provide election results in the time permitted. It is unserious.

Allowing the legislature to "adjust or void vote totals" at their discretion removes any incentive for citizen participation and delegitimizes any election outcomes. This combined with the intimidation and harassment of voters that would be allowed by observers will decrease election participation.

Attempting to satisfy the technical requirements of having all races on all ballots counted and adjudicated by people within 6 hours of polls closing would add more than \$100,000 to the cost of each election.

The State Auditor's office did not receive a response from **Adair County, Boone County, Callaway County, Cass County, Cole County, Jackson County, Jasper County, St. Charles County, St. Louis County, Taney County, the City of Cape Girardeau, the City of Columbia, the City of Jefferson, the City of Joplin, the City of Kirksville, the City of Mexico, the City of Raymore, the City of St. Joseph, the City of St. Louis, the City of Springfield, the City of Union, the City of Wentzville, the City of West Plains, Cape Girardeau 63 School District, Hannibal 60 School District, Malta Bend R-V School District, Mehlville School District, Wellsville-Middletown R-1 School District, State Technical College of Missouri, University of Missouri, St. Louis Community College, the Kansas City Board of Election Commissioners, the Jackson County Election Board, and the Clay County Board of Election Commissioners.**

Fiscal Note Summary

State and local governments estimate ongoing costs of at least \$24 million per election, but the total cost is unknown. Local governments estimate savings of at least \$80,000 annually and at least \$42,000 for each general election in a presidential election year. State governmental entities estimate no savings.